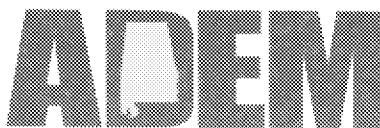


LANCE R. LEFLEUR
DIRECTOR



Alabama Department of Environmental Management
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ROBERT J. BENTLEY
GOVERNOR

November 10, 2016

CERTIFIED MAIL (NO. 91-7108-2133-3936-7150-8481)
RETURN RECEIPT REQUESTED

Ms. Lillian S. Dorka, Acting Director
U.S. Environmental Protection Agency
Office of Civil Rights
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-1000

RE: EPA File No. 12R-13-R4 (Formerly 38r-16-R4)

Dear Ms. Dorka:

The Alabama Department of Environmental Management ("ADEM") received your notice of Acceptance of Administrative Complaint for investigation in our office on October 12, 2016. This letter serves as our response to your notice.

ADEM denies that its alleged actions or inactions in any way retaliated against the complainants because of their pending Title VI complaint with the EPA Office of Civil Rights ("OCR"). The issues between the landfill owners and certain individuals which have culminated in litigation constitute a private dispute unrelated to 12R-13-R4, and, as was made clear in my April 8, 2016 letter to Earthjustice which is in your possession, no action taken by the landfill owners was taken by, through or on behalf of ADEM. In addition, ADEM makes the following points in response to OCR's acceptance of this Complaint:

1) The Title VI retaliation complaint accepted for investigation by OCR apparently arises from the filing of a federal lawsuit by Green Group Holdings, LLC, et.al (hereinafter, the "Landfill") against certain named individuals asserting claims of slander and libel. The lawsuit is currently pending in United States District Court for the Southern District of Alabama, Northern Division. Some, *but not all*, of the individuals named as defendants in the lawsuit previously had filed a Title VI complaint with EPA's Office of Civil Rights. Since the lawsuit was also filed against a defendant who has not filed a Title VI complaint, the allegation that the lawsuit was filed in "retaliation" for filing a Title VI complaint is suspect. Indeed, the term "Title VI" does not appear in the Landfill's federal lawsuit complaint.

2) ADEM is not a party to this lawsuit and has no statutory authority over the litigants' alleged claims, despite allegations by Earthjustice to the contrary. How could ADEM go about restraining the litigants from filing suit against each other? The Title VI complaint accepted for investigation is devoid of any suggestions as to how ADEM, or EPA for that matter, could specifically restrain the litigants from suing each other. Even if ADEM were to revoke the landfill's permit (the only authority ADEM holds over Green Group Holdings, LLC), the landfill would still be unrestrained to file its federal lawsuit.

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Ms. Lillian S. Dorka, Acting Director
U.S. Environmental Protection Agency
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November 10, 2016
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Indeed, were ADEM to revoke the permit, Green Group Holdings, LLC could ostensibly cite the loss of the permit as an additional element of damages against the plaintiffs. Rather than restraining the lawsuit, ADEM's revocation of the permit could add fuel to the lawsuit fire.

3) The pending Title VI complaint also suggests that the landfill, as a holder of a permit issued by ADEM (along with 25,000 other permit holders), is somehow restrained or precluded from asserting its rights in court due to a pending Title VI Complaint against ADEM. Clearly, this suggestion is baseless and false, as is the suggestion that Earth Justice's clients somehow have immunity from complying with state and federal law because of the pendency of their three year old Title VI Complaint.

Beyond these observations, ADEM takes no position on the third party litigation now pending in U.S. District Court, and notes that any position taken by ADEM - or OCR - at this juncture could be considered to be prejudicial to either set of parties. Because the subject matter of the "retaliation" complaint is now pending in U.S. District Court and will likely be resolved in that forum, ADEM requests that OCR dismiss EPA File No. 12R-13-R4 (Formerly 38r-16-R4) based upon the same rationale as set forth in OCR's dismissal of the Uniontown complaint (01R-12-R4) on September 26, 2012, to wit:

"In situations where the allegations raised in the complaints involve the same facts that are also the subject of litigation in Federal court, such that the result of those proceedings could affect the outcome of the Title VI investigation, it is OCR's general practice to dismiss without prejudice the administrative complaint, pending results of the litigation. Therefore, OCR is dismissing without prejudice, complaint 01R-12-R4, pending results of the litigation."

Failure to dismiss this complaint would add to the established and growing pattern of arbitrary and capricious actions by OCR against ADEM, an agency of the State of Alabama. That pattern includes: the failure of OCR to act on file 06R-03-R4 which has been pending for more than thirteen years; the failure to act on file 12R-13-R4 which has been pending for more than three years; and, erroneously accepting for investigation and failing to fully dismiss file 13R-16-R4.

If you have any questions concerning our response, please contact Shawn Sibley, ADEM Office of General Counsel, at (334) 271-7855.

Sincerely,



Lance R. LeFleur
Director

LRL:df